

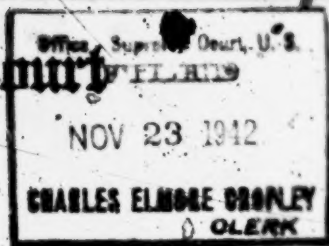


**In the Supreme Court**

OF THE  
**United States**

OCTOBER TERM, 1942

No. 540



G. E. MYERS, Trustee of the estate of  
Marshall Reno Matley, formerly do-  
ing business under the name and style  
of Matley's Food Store,

*Petitioner and Appellant below,*

vs.

VERNA MAY MATLEY,

*Respondent and Appellee below.*

**PETITION FOR WRIT OF CERTIORARI**

to the United States Circuit Court of Appeals

for the Ninth Circuit

and

**BRIEF IN SUPPORT THEREOF.**

HARLAN L. HEWARD,

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**to the United States Circuit Court of Appeals**  
**for the Ninth Circuit.**

*To the Honorable Harlan Fiske Stone, Chief Justice*  
*of the United States, and to the Associate Justices*  
*of the Supreme Court of the United States:*

## **SUMMARY STATEMENT OF MATTER INVOLVED.**

This is a controversy arising from an involuntary  
bankruptcy proceeding brought in the United States

District Court for the District of Nevada, the petition in bankruptcy being filed on October 24, 1940. (R. 2, 51.)

The Petitioner herein is the duly appointed trustee in bankruptcy in said proceeding (R. 52), and the Respondent herein is the wife of the bankrupt, Marshall Reno Matley. (R. 52.)

The Respondent, on November 27, 1940, filed her petition that certain property be declared exempt as being a homestead (R. 52), to which the Petitioner, as trustee, filed written objections (R. 52) upon the ground that no declaration of homestead had been filed in accordance with the laws of the State of Nevada (R. 52) until November 20, 1940 (R. 10), almost one month after the filing of the petition in bankruptcy on October 24, 1940.

The matter was heard before the Hon. Arthur F. Lasher, Referee in Bankruptcy, who rendered his Opinion sustaining the trustee's objections on the 11th day of June, 1941. (R. 52, 15.)

Thereafter on a Petition for Review to the United States District Court for the District of Nevada (R. 39) said United States District Court for the District of Nevada rendered its judgment on the 25th day of November, 1941, granting the Respondent's homestead exemption claim. (R. 44.)

An appeal from this judgment of the United States District Court for the District of Nevada to the United States Circuit Court of Appeals for the Ninth Circuit was taken by the Petitioner (R. 51), and the said



United States Circuit Court of Appeals for the Ninth Circuit affirmed the Judgment of the United States District Court for the District of Nevada on the 15th day of September, 1942 (R. 66), *Circuit Judge Denman dissenting.* (R. 76.)

The Petitioner thereafter filed a Petition for Rehearing by said United States Circuit Court of Appeals for the Ninth Circuit (R. 86), which said petition was denied by said Court on the 26th day of October, 1942 (R. 86), *Circuit Judge Denman dissenting.* (R. 86.)

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**BASIS OF JURISDICTION OF UNITED STATES  
SUPREME COURT.**

The judgment sought to be reviewed was entered by the United States Circuit Court of Appeals for the Ninth Circuit on the 15th day of September, 1942 (R. 66), and Petitioner's Petition for Rehearing was denied by said Court on the 26th day of October, 1942. (R. 86.)

The jurisdiction of the United States Supreme Court is invoked under Section 24c of the Bankruptcy Act and under Section 240a of the Judicial Code, 28 U.S.C.A. 347.

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**QUESTION PRESENTED.**

Whether, under the United States Bankruptcy Act, Section 70a as amended on June 22, 1938, 11 U.S.C.A. 110; and under the statutes and decisions of the State



of Nevada, the Respondent, Verna May Matley, wife of the bankrupt, is entitled to have a certain dwelling house set aside to her as a homestead in view of the fact that an involuntary petition in bankruptcy was filed on October 24, 1940, at which time no declaration of homestead had been filed, and that no such declaration of homestead was filed by either the said Verna May Matley or by her husband, Marshall Reno Matley, the bankrupt, until the 20th day of November, 1940.

This question was decided by the United States Circuit Court of Appeals for the Ninth Circuit and materially affected and controlled the determination of said appeal.

**REASONS RELIED ON FOR THE ISSUANCE OF THE WRIT.**

1. That the United States Circuit Court of Appeals for the Ninth Circuit held that the amendment to Section 70a of the Bankruptcy Act of June 22, 1938, wherein said section was amended by changing the words "which is exempt" to read, "which is held to be exempt" relaxed the rule established by *White v. Stump*, 266 U. S. 310 (R. 72), and permitted a bankrupt to establish a right of exemption after the filing of the petition in bankruptcy.

Circuit Judge Denman in his dissenting opinion (R. 76) says:

*"The court has decided an important federal question of first impression, to-wit, an amendment to bankruptcy law, in conflict with White v. Stump, 266 U. S. 310, and the applicable decisions of the United States Supreme Court."*

The effect of this amendment is an important question of federal law and should be settled by this Court in order to establish what exemptions are permissible under the Bankruptcy Act as a result of said amendment.

2. The United States Circuit Court of Appeals for the Ninth Circuit held that under the laws of Nevada a *de facto* homestead right subsisted as against execution creditors or a trustee in bankruptcy prior to the filing of a declaration of homestead. Circuit Judge Denman, in his dissenting opinion (R. 81) says:

*"The court has decided an important question of local law of Nevada with respect to the right of a wife in a homestead prior to a transfer by operation of the Nevada law, similar to the transfer by operation of law on the filing of a petition in bankruptcy, where the wife has taken no steps to create the homestead prior thereto, in conflict with the applicable Nevada decisions to the contrary."*

#### Prayer:

Wherefore, your Petitioner prays that a Writ of Certiorari issue under the seal of this Court directed to the United States Circuit Court of Appeals for the Ninth Circuit commanding said Court to certify and to send to this Court a full and complete transcript of the record and of the proceedings of said United States Circuit Court of Appeals for the Ninth Circuit had in the case numbered on its docket No. 10,028, G. E. Myers, Trustee of the estate of Marshall Reno Matley, formerly doing business under the name and style of Matley's Food Store, Bankrupt, Appellant, vs.

Verna May Matley, Appellee, to the end that this cause may be reviewed and determined by this Court as provided for by the statutes of the United States, and that the judgment herein of said United States Circuit Court of Appeals for the Ninth Circuit be reversed by this Court, and for such further relief as this Court may deem proper.

Dated, Reno, Nevada,  
November 16, 1942.

HARLAN L. HEWARD,  
*Counsel for Petitioner  
and Appellant.*

PAINTER, WITHERS & EDWARDS,  
By T. L. WITHERS,  
*Of Counsel for Petitioner  
and Appellant.*





# In the Supreme Court

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Marshall Reno Matley, formerly do-  
ing business under the name and style  
of Matley's Food Store,

*Petitioner and Appellant below,*

VS.

VERNA MAY MATLEY,

*Respondent and Appellee below.*

## BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

### (A) STATUTORY PROVISIONS TO SUSTAIN JURISDIC- TION OF THE SUPREME COURT OF THE UNITED STATES.

The jurisdiction of the United States Supreme Court is invoked under Section 24c of the Bankruptcy Act and under Section 240a of the Judicial Code, 28 U.S.C.A. 347.

**(B) OPINIONS BELOW.**

The opinion of the United States Referee in Bankruptcy, including an exhaustive analysis of the Nevada statutes and decisions, was entered the 16th day of July, 1941. (R. 15.)

The opinion of the United States District Court for the District of Nevada was entered the 25th day of November, 1941. (R. 44.) This case is not reported.

The opinion of the United States Circuit Court of Appeals for the Ninth Circuit was entered on September 15, 1942. (R. 66.) This case is not yet reported.

The Petition for Rehearing was denied by the United States Circuit Court of Appeals for the Ninth Circuit on October 26, 1942. (R. 86.)

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**STATEMENT OF FACTS.**

This matter was heard in the United States Circuit Court of Appeals for the Ninth Circuit upon an agreed statement of facts. (R. 51.)

The only facts necessary for the consideration of the question here presented are, that an involuntary petition in bankruptcy was filed on the 24th day of October, 1940 (R. 2); that no declaration of homestead was filed by the bankrupt or by the Respondent, his wife, until the 20th day of November, 1940 (R. 10); that although the bankrupt listed said property in his schedules, no homestead exemption was claimed by the bankrupt in his schedules (R. 52); that Petitioner is the duly appointed, qualified and acting trustee in



bankruptcy of Marshall Reno Matley, Bankrupt (R. 52); that the Respondent is the wife of Marshall Reno Matley. (R. 52.)

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### STATUTES INVOLVED.

The Nevada Constitution and Statutes and the Georgia Constitution and Statutes involved will be found in the Appendix.

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### SPECIFICATION OF ERRORS.

The United States Circuit Court of Appeals for the Ninth Circuit erred:

1. In holding that the amendment of the Bankruptcy Act of June 22, 1938, 11 U.S.C.A. 110, wherein Section 70a of the Bankruptcy Act was amended by changing the words "which is exempt" to read "which is held to be exempt" relaxed the rule of *White v. Stump*; 266 U. S. 310, by permitting a bankrupt to establish a right of exemption which was not complete at the time of the filing of the petition in bankruptcy, and in holding that said amendment was for any purpose other than to clarify said section.

2. In holding that under the laws of Nevada a homestead *de facto* existed prior to the filing of a declaration of homestead as against execution creditors, i.e., a trustee in bankruptcy, and/or that the right of a homestead exemption could be perfected after the filing of a petition in bankruptcy. That is, in

holding that the property in question under the Nevada law could not have been sold by execution creditors on the date of the filing of the petition in bankruptcy; and in refusing to consider in any way the only two Nevada cases dealing specifically with this subject, to-wit:

*McGill v. Lewis*, 116 Pac. (2d) 581;

*Lachman v. Walker*, 15 Nev. 422.

3. In holding that the case of *Clark v. Nirembaum*, 8 Fed. (2d) 451, was controlling or materially affected the present case in view of the difference between the Georgia and Nevada statutes involved.

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#### ARGUMENT.

I. The Writ should be granted in order that there may be a determination of the question of whether or not the amendment of June 22, 1938, to the Bankruptcy Act, 11 U.S.C.A. 110, whereby Section 70a of said Act was amended by changing the words "which is exempt" to read, "Which is held to be exempt", was merely for the purpose of clarifying that section or whether the amendment actually changed the scope and effect thereof.

The United States Supreme Court, in the case of *White v. Stump*, 266 U. S. 310, clearly analyzed and interpreted the meaning of this section of the Bankruptcy Act prior to the amendment and held that it and certain other sections of the Bankruptcy Act, to-wit, Sections 6, 7, 47a, 70a, and 70c, "show that the point of time which is to separate the old situation

from the new in the bankrupt's affairs is the date when the petition is filed"; and further held that "in our opinion this point of time is the one as of which the general estate passes out of the bankrupt's control and with respect to which the status and rights of the bankrupt and creditors and the trustee and other particulars are fixed. The provisions before cited show—some expressly and others impliedly—that one common point of time is intended and that it is the date of the filing of the petition. The bankrupt's right to control and dispose of the estate terminates as of that time save only as to property 'which is exempt'."

Since that time all cases involving homestead exemptions have been decided under the foregoing doctrine. Petitioner has found no cases holding that the amendment of June 22, 1938, in any way affected the application of Section 70a of the Bankruptcy Act as interpreted by the United States Supreme Court in the case of *White v. Stump*, supra.

Likewise, the petitioner has found no text writers that even suggest that this amendment in any way affected the meaning or application of the section.

*Remington on Bankruptcy*, 4th Ed., Sec. 1178 et seq.

The decision of the United States Circuit Court of Appeals for the Ninth Circuit that this amendment relaxed the rule laid down by the United States Supreme Court in *White v. Stump*, supra, which rule has been applied by the United States Circuit Court of

Appeals for the Ninth Circuit in the case of *Georg-houses v. Gillen*, 24 Fed. (2d) 292 (R. 72), and followed in numerous other cases, opens up a wide field of speculation since, under this decision, there is apparently no definite time which can be set as determining when property actually passes to a trustee in bankruptcy. The effect of this decision is that an exemption which was not complete at the time of filing the petition in bankruptcy can be completed and property declared to be exempt after the jurisdiction of the Bankruptcy Court has attached.

Since this is apparently a question of first impression, no specific authority can be quoted.

The dissenting opinion of Circuit Judge Denman with reference to the effect of this amendment upon the Bankruptcy Act clearly and succinctly states your petitioner's position on this question. (R. 81.)

II. The writ should be granted since the decision of the United States Circuit Court of Appeals for the Ninth Circuit that under the laws of Nevada a *de facto* homestead exists as against execution creditors, i.e., a trustee in bankruptcy, and that under Nevada laws the rights of the Respondent in the homestead are thus established to a degree that it can be perfected thereafter, is directly contrary to the Nevada statutes and decisions.

The Constitution of Nevada, Article 4, Section 14 (Appendix), provides:

"A homestead as provided by law *shall be exempt* from forced sale under any process or law and shall not be alienated without the joint consent of both the husband and wife when that relation exists. \* \* \*"

This provision of the Nevada Constitution clearly contemplates that the Nevada Legislature will pass statutes defining and providing for the exemption of a homestead. Such a statute was, in fact, passed by the Nevada Legislature in 1865, and, with certain minor amendments, is now Section 3315 of the Nevada Statutes. (Appendix.)

The Nevada Legislature also passed a general exemption statute wherein the Legislature provided:

"The following property is exempt from execution."

As originally passed this section did not refer to the homestead. However, in 1911 paragraph 15, reading:

"And the homestead as provided by law"

was added to this statute. This section is now Section 8844 of the Nevada Statutes. (Appendix.)

It will be noted that the only thing with reference to the exemption of the homestead added by this section to Article 4, Section 30, of the Nevada Constitution is that the Constitution uses the verb "shall be" whereas Section 8844 of the Nevada Statutes uses the verb "is" exempt.

However, both sections specifically refer to the homestead "as provided by law" and hence, both the Nevada Constitution and Section 8844 of the Nevada Statutes must be construed in connection with Section 3315 of the Nevada Statutes, which defined a homestead and requires the filing of a declaration of homestead.

It is true that the Legislature likewise passed Section 3360 which prohibited the alienation of the homestead by mortgage, deed, or other voluntary act of the husband without the consent of the wife. However, this section refers merely to the alienation of the property by the husband and does not in any way refer to the alienation of the property by operation of law, i.e., by sale under execution or petition in bankruptcy, etc.

The United States Circuit Court of Appeals for the Ninth Circuit in its decision relies upon the Nevada case of *First Nat'l Bank of Ely v. Meyers*, 150 Pac. 308 (on rehearing, 161 Pac. 929). This case, however, involved solely the right of a husband to alienate property by his own act without the consent of the wife. In other words, this case involves solely the interpretation of Section 3360 of the Nevada Statutes, and in this case the Nevada Supreme Court very carefully limits the scope of the decision to the question there being considered by saying (161 Pac. 930):

"In the case at bar it must be recalled that we are not dealing with the question of forced sale of a homestead under execution or by final process



from any court for any debt or obligation. We are dealing exclusively with the right of one spouse to alienate a homestead without the joint consent of the other. We are dealing here solely with the question of the validity of an instrument made by the husband without the knowledge, consent or acquiescence of the wife, by which instrument the former alienated at least to the extent of a mortgage, the home which had been at all times and was then, openly and notoriously occupied by, and was the only place of abode for himself, his wife, and his family."

Again, on page 932 the Court in this case says:

"Recordation may be and, in fact, is necessary to give notice to all the world of the selection of the homestead to exempt it from forced sale under execution. But to exempt it from alienation by one spouse without the consent of the other, in the absence of specific constitutional or statutory provision, why should such be necessary?"

The United States Circuit Court of Appeals for the Ninth Circuit, in its majority opinion, refused to consider the two leading Nevada cases dealing specifically with the question of the rights of an execution creditor as against the claim of homestead exemption. In this connection Petitioner admits that under the laws of Nevada as interpreted by the Nevada Supreme Court, a declaration of homestead filed at any time prior to actual execution sale is sufficient to establish the homestead right. On the other hand, the Nevada



Supreme Court, in the case of *McGill v. Lewis*, 116 Pac. (2d) 581, and in the case of *Lachman v. Walker*, 15 Nev. 422, holds specifically as indicated in the dictum of the case of *First Nat'l Bank of Ely v. Meyers*, supra, that a valid declaration of homestead must be filed in order to prevent execution sale. Thus, in the case of *Lachman v. Walker*, supra, the Court says (p. 923):

"This appeal is from that judgment, and but one question is presented for our consideration, viz.: Is compliance with the first section of the homestead statute (Comp. L. 186) in relation to the manner of selection, a condition precedent to the exemption therein provided, when, as in this case, the premises are actually occupied as the home of the judgment debtor, and might have been selected and held as a homestead according to the provisions of the statute?"

On page 424 the Court further says:

"In this case no declaration has ever been filed, and we have not the slightest doubt that the property is not exempt. *The statute only exempts a homestead which has been selected according to its provisions.* 'The homestead \* \* \* to be selected \* \* \* shall not be subject to forced sale. \* \* \* Said selection shall be made by either husband or wife, or both of them, \* \* \* declaring their intention in writing to claim the same as a homestead.' *The Law does not compel any person to have his property become a statutory homestead, against his will, but requires him to do certain things in order to enjoy its benefits.*"

Likewise, the Nevada Supreme Court, in the very recent case decided on August 30, 1941, of *McGill v. Lewis*, 116 Pac. (2d) 581, says:

*"To secure the benefits of the Constitutional and statutory provisions exempting the homestead from forced sale under process of law (with certain exceptions not here pertinent), it is necessary that a declaration of homestead be filed for record as provided in Section 3315, N.C.L. 1929. Lachman v. Walker, 15 Nev. 422. The case last cited was not overruled in First Nat'l Bank of Fly v. Meyers, 39 Nev. 235, 150 Pac. 308; Id., 40 Nev. 284, 161 P. 929. In that case, it is true, no declaration for homestead was filed for record but the question before the court was not as to the exemption of the homestead from forced sale; it was whether the husband alone could mortgage the homestead occupied by him and his family."*

Both of these cases involve the identical question here presented and both hold that a declaration of homestead must be filed to prevent a sale on execution. No Nevada cases hold that a declaration of homestead is not necessary to prevent sale on execution. Consequently, since in the case at Bar no declaration had been filed prior to the sale on execution, that is, prior to the date of the filing of the petition in bankruptcy, the trustee, on the date of the filing of the petition in bankruptcy, as provided by Section 70a of the Bankruptcy Act, acquired absolute title to the property, since the property, on the 24th day of October, 1940, "might have been levied upon and sold under judicial process against him".

III. The Writ should be granted since the case of *Clark v. Nirembaum*, 8 Fed. (2d) 451, does not sustain the majority opinion of the United States Circuit Court of Appeals for the Ninth Circuit. It will be noted that this case was decided under Article 9, Section 1, Paragraph 1, Georgia Constitution, Section 6582, Park's Ann. Code of Georgia, and Section 3416, Park's Ann. Code of Georgia. (Appendix.)

It will also be noted that both the Constitution and the Statutes of Georgia definitely exempt homestead property "from levy and sale by virtue of any process whatever".

The Georgia Statutes and Constitution differ from the Nevada Statutes, since in Nevada "the homestead as provided by law" only is exempt, and the only legal provision with reference to the homestead requires the filing of a declaration of homestead. (Sec. 3315, Nevada Statutes, Appendix.)

Hence, the right to a homestead exemption under the laws of Georgia is clear since in Georgia the exemption "is not property which would or might be exempt if some condition not properly performed were performed, but a property to which there is, under the state law, a present right of exemption; *one which withdraws the property from levy and sale under judicial process*". Whereas, under the Nevada Constitution and Statutes "the land in question here was not in that situation when the petition was filed. It was not then exempt under the state law but was subject to levy and sale. One of the conditions upon which it

might have been rendered exempt had not been performed. Under the state law the fact that the other conditions were present did not suffice. The concurring presence of all was necessary to complete the homestead exemption." (*White v. Stamp, supra.*)

Dated, Reno, Nevada,  
November 16, 1942.

Respectfully submitted,

HARLAN L. HEWARD,

*Counsel for Petitioner  
and Appellant.*

PAINTER, WITHERS & EDWARDS,

By T. L. WITHERS,

*Of Counsel for Petitioner  
and Appellant.*

(Appendix Follows.)



## **Appendix.**







## Appendix

Georgia Constitution, Article 9, Sec. 1, Par. 1, Section 6582, Park's Ann. Code of Georgia:

"There shall be exempt from levy and sale by virtue of any process whatever under the laws of this state, except as hereinafter excepted of the property of every head of a family, a guardian or trustee of a family of minor children, or every aged or infirm person, or person having the care and support of dependent females of any age, who is not the head of a family, realty or personalty, or both, to the value in the aggregate of \$1600.00."

Section 3416, Park's Ann. Code of Georgia, reads:

"The following property of every debtor who is the head of a family, shall be exempt from levy and sale by virtue of any process whatever, under the laws of this state, nor shall any valid lien be created thereon, except in the manner hereinafter pointed out, but it shall remain for the use and benefit of the family of the debtor:

(1) 50 acres of land and 50 additional acres for each of his or her children under the age of 16. This land shall include the dwelling house, if the value of said house and improvements does not exceed the sum of \$200.00 \* \* \* Or, in lieu of the above land, real estate in a city, town or village not exceeding \$500.00 in value."

The Nevada Constitution and Statutes referred to are:

Nevada Constitution, Article 1, Section 14, reads:

"The privilege of the debtor to enjoy the necessary comforts of life shall be recognized by whole-

some laws, exempting a reasonable amount of property from seizure or sale for payment of any debts or liabilities hereafter contracted; and there shall be no imprisonment for debt, except in cases of fraud, libel or slander, and no person shall be imprisoned for a militia fine in time of peace."

Nevada Constitution, Article 4, Section 30, reads:

"A homestead, as provided by law, shall be exempt from forced sale under any process of law, and shall not be alienated, without the joint consent of husband and wife when that relation exists; but no property shall be exempt from sale for taxes or for the payment of obligations contracted for the purchase of the premises, or for the erection of improvements thereon; provided, the provisions of this section shall not apply to any process of law obtained by virtue of a lien given by the consent of both husband and wife, and laws shall be enacted providing for the recording of such homestead within the county in which the same shall be situated."

Section 3360, Nevada Compiled Laws, reads:

"The husband shall have the entire management and control of the community property, with the like absolute power of disposition thereof, except as hereinafter provided, as of his own separate estate; provided, that no deed of conveyance or mortgage of a homestead as now defined by law, regardless of whether a declaration thereof has been filed or not, shall be valid for any purpose whatever unless both the husband and the wife execute and acknowledge the same as now provided by law for the conveyance of real estate; provided further, that the wife shall have the

entire management and control of the earnings and accumulations of herself and her minor children living with her, with the like absolute power of disposition thereof, when said earnings and accumulations are used for the care and maintenance of the family."

Section 8844, Nevada Compiled Laws, reads:

"The following property is exempt from execution, except as herein otherwise specifically provided:

1. Chairs, tables, desks, and books to the value of two hundred dollars, belonging to the judgment debtor.
2. Necessary household, table, and kitchen furniture belonging to the judgment debtor \* \* \*
3. The farming utensils or implements of husbandry of the judgment debtor, not exceeding in value the sum of one thousand dollars; also, two oxen, or two horses, or two mules, \* \* \*
4. The tools or implements of a mechanic or artisan necessary to carry on his trade; the notarial seal, records, and office furniture of a notary public \* \* \*
5. The cabin or dwelling of a miner or prospector, not exceeding in value the sum of five hundred dollars; also, his sluices, pipes, hose, \* \* \*
6. Two horses, two oxen, or two mules, and their harness, and one cart or wagon, one dray or truck, one coupe, one hack or carriage for one or two horses, or one motor vehicle, by the use of which a cartman, drayman, truckman, huckster, peddler, hackman, teamster, or other laborer habitually earns his living \* \* \*

7. Poultry not exceeding in value seventy-five dollars.
8. The earnings of the judgment debtor for his personal services rendered at any time within thirty days next preceding the levy of execution or attachment \* \* \*
9. All fire engines, hooks and ladders \* \* \*
10. All arms, uniforms, and accouterments required by law to be kept by any person, and also one gun, to be selected by the debtor.
11. All courthouses, jails, public offices and buildings \* \* \*
12. All material not exceeding one thousand dollars in value, purchased in good faith for use in the construction, alteration, or repair of any building \* \* \*
13. All machinery, tools and implements necessary in and for boring, sinking, putting down, and constructing surface or artesian wells; \* \* \*
14. All moneys, benefits, privileges, or immunities accruing or in any manner growing out of any life insurance \* \* \*
15. *And the homestead as provided for by law.*
16. The dwelling of the judgment debtor occupied as a 'home for himself and family, where said dwelling is situate upon lands not owned by him'.

No article, however, or species of property mentioned in this section is exempt from execution issued upon a judgment to recover for its price, or upon a judgment of foreclosure of a mortgage or other lien thereon."

Section 3315, Compiled Laws of Nevada, reads:

"The homestead, consisting of a quantity of land, together with the dwelling house thereon and its appurtenances, not exceeding in value five thousand dollars, to be selected by the husband and wife, or either of them, or other head of a family, shall not be subject to forced sale on execution, or any final process from any court, for any debt or liability contracted or incurred after November thirteenth, in the year of our Lord one thousand eight hundred and sixty-one, except process to enforce the payment of the purchase money for such premises, or for improvements made thereon, or for legal taxes imposed thereon, or for the payment of any mortgage thereon, executed and given by both husband and wife, when that relation exists. Said selection shall be made by either the husband or wife or both of them, or other head of a family, declaring their intention in writing to claim the same as a homestead. Said declaration shall state when made by a married person or persons that they or either of them are married, or if not married, that he or she is the head of a family, and they or either of them, as the case may be, are, at the time of making such declaration, residing with their family, or with the person or persons under their care and maintenance, on the premises, particularly describing said premises, and that it is their intention to use and claim the same as a homestead, which declaration shall be signed by the party or parties making the same, and acknowledged and recorded as conveyances affecting real estate are required to be acknowledged and recorded; and from and after the filing for record of said declaration, the husband and wife shall be deemed to hold said homestead as

joint tenants; provided, that if the property declared upon as a homestead be the separate property of either spouse, both must join in the execution and acknowledgment of the declaration; and if such property shall retain its character of separate property until the death of one or the other of such spouses, then and in that event the homestead right shall cease in and upon said property, and the same belong to the party (or his or her heirs) to whom it belonged when filed upon as a homestead; and, provided further, that tenants in common may declare for homestead rights upon their respective estates in lands, and the improvements thereon; and hold and enjoy homestead rights and privileges therein, subject to the rights of their co-tenants, to enforce partition of such common property as in other cases of tenants in common."



